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File Date: \_\_\_\_\_

# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Board of Water Quality, Oil and Gas
<b>Division:</b>	Water Resources
<b>Contact Person:</b>	Jimmy Smith
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee 37243
<b>Phone:</b>	(615) 532-0648
<b>Email:</b>	<a href="mailto:Jimmy.R.Smith@tn.gov">Jimmy.R.Smith@tn.gov</a>

*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243
<b>Phone:</b>	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service 1-800-848-0298
<b>Email:</b>	<a href="mailto:Beverly.Evans@tn.gov">Beverly.Evans@tn.gov</a>

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Multi Media Room, 3 <sup>rd</sup> Floor William R. Snodgrass Tennessee Tower		
Address 2:	312 Rosa L. Parks Avenue		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	06/27/18		
Hearing Time:	2:00 p.m.	<input checked="" type="checkbox"/> X CST/CDT	<input type="checkbox"/> EST/EDT

**Video Conferencing Locations**

Address 1:	Conference Room Nashville Environmental Field Office		
Address 2:	711 R. S. Gass Blvd.		
City:	Nashville, Tennessee		
Zip:	37216		
Hearing Date :	06/27/18		
Hearing Time:	2:00 p.m.	<input checked="" type="checkbox"/> X CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Conference Room Memphis Environmental Field Office		
Address 2:	8383 Wolf Lake Drive		
City:	Bartlett, Tennessee		
Zip:	38133-4119		
Hearing Date :	06/27/18		
Hearing Time:	2:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Conference Room Jackson Environmental Field Office		
Address 2:	1625 Hollywood Drive		
City:	Jackson, Tennessee		
Zip:	38305		
Hearing Date :	06/27/18		
Hearing Time:	2:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Conference Room Columbia Environmental Field Office		
Address 2:	1421 Hampshire Pike		
City:	Columbia, Tennessee		
Zip:	38401		
Hearing Date :	06/27/18		
Hearing Time:	2:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Conference Room Cookeville Environmental Field Office		
Address 2:	1221 South Willow Avenue		
City:	Cookeville, Tennessee		
Zip:	38506		
Hearing Date :	06/27/18		
Hearing Time:	2:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Conference Room Chattanooga Environmental Field Office		
Address 2:	1301 Riverfront Parkway, Suite 206		
City:	Chattanooga, Tennessee		
Zip:	37402		
Hearing Date :	06/27/18		
Hearing Time:	3:00 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Conference Room Knoxville Environmental Field Office		
Address 2:	3711 Middlebrook Pike		
City:	Knoxville, Tennessee		
Zip:	37921		
Hearing Date :	06/27/18		
Hearing Time:	3:00 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Conference Room Johnson City Environmental Field Office		
Address 2:	2305 Silverdale Drive		
City:	Johnson City, Tennessee		
Zip:	37601-2162		
Hearing Date :	06/27/18		
Hearing Time:	3:00 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

## **Additional Hearing Information:**

This proposed rulemaking would substantially revise Rule Chapter 0400-40-07, which governs aquatic resource alteration permits (“ARAPs”). ARAPs authorize habitat alterations and water withdrawals and, where required, serve as certifications of compliance with state water quality standards under Section 401 of the Clean Water Act.

The proposed revisions clarify that ARAPs are required only for alterations of streams and wetlands, and would remove all references to wet weather conveyances because these are governed by T.C.A. § 69-3-108(q).

This rulemaking introduces the new term “baseline conditions” to reflect actual pre-impact resource values. The rules require compensatory mitigation to ensure no overall net loss of resource values from baseline conditions. The new term is intended to ensure that this mitigation is limited to what is necessary to offset the harm actually caused by the permitted activity, and not to compensate for pre-existing degradation. This change would also ensure appropriate mitigation for impacts to high quality waters, including Exceptional Tennessee Waters.

The current ARAP rules require only that a permit applicant consider avoidance and minimization and submit an alternatives analysis. Proposed Rule 0400-40-07-.04(5)(b) would require implementation of any practicable alternatives that have less adverse impact on resource values, so long as this does not result in other adverse environmental consequences. This rule is comparable to the Corps of Engineers’ requirement for Section 404 permits, which are the federal equivalent of ARAPs.

The amendments would change the permitting process to include a draft permit and rationale, consistent with other types of permits issued by the Division of Water Resources. This will enhance transparency and improve the public notice process. Currently, the Division publishes only a notice of a complete application, without a draft permit or an explanation of what it intends to do, leaving interested persons (including permit applicants) with little basis to submit meaningful comment. The amendments also conform the permit appeal process to T.C.A. § 69-3-105(i) by clarifying that third parties, not just permit applicants, may appeal permits if they meet specific conditions.

Proposed amendments to the mitigation rule, 0400-40-07-.04(7), retain substantial portions of the existing rule while clarifying the methodology to ensure no overall net loss of resource values from baseline conditions. This rule prioritizes mitigation as close to the impact site as practicable. The rule also clarifies that mitigation for impacts to Tennessee streams and wetlands must occur in Tennessee.

Finally, the revisions include administrative updates and clean-up edits, including elimination of definitions that are not used in the rules or in permits.

### **Question and Answer Session**

**The Department is offering, in the main hearing location and by Video Conference, a Question and Answer session on these draft rules starting at 1:00 p.m. CDT or 2:00 p.m. EDT.**

The “Draft” rules may be accessed for review using <http://tn.gov/environment/topic/ppo-water>.

Draft copies are also available for review at the following address:

Tennessee Department of Environment and Conservation  
Division of Water Resources  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 11th Floor  
Nashville, Tennessee 37243  
(615) 532-0159

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Division of Water Resources; Tennessee Department of Environment and Conservation; Attention: Jimmy R. Smith; William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor, Nashville, Tennessee 37243; telephone (615)532-0648 or FAX (615) 532-0686. However, such written comments must be received by the Division by 4:30 PM CDT, July 9, 2018, in order to ensure consideration. For further information, contact Jimmy R. Smith at the above address or telephone number.

**Revision Type (check all that apply):**

☒ Amendment  
☐ New  
☐ Repeal

**Rule(s)** (**ALL** chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0400-40-07	Aquatic Resource Alteration
Rule Number	Rule Title
0400-40-07-.01	General
0400-40-07-.02	Exemptions
0400-40-07-.03	Definitions
0400-40-07-.04	Permits

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to

[http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines\\_September2016.pdf](http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf).

Chapter 0400-40-07  
Aquatic Resource Alteration

Amendments

Rule 0400-40-07-.01 General is amended by deleting it in its entirety and substituting instead the following:

0400-40-07-.01 General

- (1) These rules are promulgated ~~in order~~ to prevent the future pollution of state waters and to plan for the future use of such waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters, T.C.A. § 69-3-102(b). Persons who wish to conduct an activity that may impact a ~~water of the state~~ stream or wetland shall consider avoidance and minimization of such impacts. If impacts to ~~the waters a stream or wetland~~ will ~~occur result in an appreciable permanent loss of resource values~~, mitigation as set forth in paragraph (7) of Rule 0400-40-07-.04 must be ~~proposed provided~~ to ~~offset any lost resource value~~ ensure no overall net loss of resource values.
- (2) ~~The Section 401 of the~~ Federal Water Pollution Control Act or Clean Water Act, ~~§ 401 (~~ 33 U.S.C. § 1341), provides that an applicant for a federal license or permit for a discharge into the waters of the United States must provide the federal licensing or permitting agency a certification from the State in which the discharge originates or will originate, and that any such discharge will comply with the applicable provisions of §§ 301, 302, 303, 306 and 307 of that Act.
- (3) Additionally, the Tennessee Water Quality Control Act of 1977, T.C.A. § 69-3-108(b)(1), provides that it is unlawful for any person, except in accordance with the conditions of a valid permit, to carry out any activity which ~~may result results~~ in the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the State, including wetlands. These activities include, but are not limited to: the discharge of dredge or fill material, dredging, stream channel modifications, water withdrawals, wetlands alterations including drainage, and other construction activities which result in the alteration of the waters of the State. State permits for these activities are ~~either § 401 Water Quality Certifications or~~ Aquatic Resource Alteration Permits, which also serve as § 401 certifications where required. Alterations of wet weather conveyances are governed by T.C.A. § 69-3-108(q).
- (4) This Chapter prescribes the procedures ~~peculiar applicable to these aquatic resource alteration~~ permits, in addition to the general requirements and procedures of Chapter 0400-40-01 of the rules of the Board of Water Quality, Oil and Gas and the Department of Environment and Conservation, and the Tennessee Water Quality Control Act of 1977. ~~This regulation only applies to Permits issued pursuant to this chapter do not authorize activities which do not that require a National Pollutant Discharge Elimination System (NPDES) permit or which do not result from the operation of a treatment system permit, a state operating permit, or an underground injection control permit.~~

*Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.*

Paragraphs (3) and (4) of Rule 0400-40-07-.02 Exemptions are amended by deleting them in their entirety and substituting instead the following:

- (3) The Department of Agriculture provides guidance for development of best management practices ~~(BMP's)~~ (BMPs) for agriculture and forestry. One of the primary goals of these ~~BMP's~~ BMPs is the prevention of soil erosion and discharge of silt and sedimentation to streams. These ~~BMP's~~ BMPs should be followed. If silvicultural activities ~~fail have polluted waters of the state as a result of a failure to use BMP's and a point source discharge results in water pollution~~ BMPs, the Commissioner is authorized to issue a stop work order under ~~P.Ch. 680 of the Acts of 2000~~ T.C.A. § 69-3-133.
- (4) Existing water withdrawals on July 25, 2000 which do not adversely alter or ~~effect~~ affect the classified use of the source stream are not subject to these requirements.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Rule 0400-40-07-.03 Definitions is amended by deleting it in its entirety and substituting instead the following:

0400-40-07-.03 Definitions

As used in this ~~Chapter~~ chapter and in any ARAP ~~permit issued, including General Permits issued pursuant to this chapter,~~ the following terms have these meanings:

- (1) "Act" means The Tennessee Water Quality Control Act of 1977, as amended, T.C.A. §§ 69-3-101 et seq.
- (2) "Activity" means any and all work or acts associated with the performance, or carrying out of a project or a plan, or construction of a structure.
- ~~(3) "Adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the State by man-made dikes or barriers, natural river berms and the like are "adjacent wetlands".~~
- ~~(4)(3)~~ "Aquatic Resource Alteration Permit" or "ARAP" means a permit issued pursuant to T.C.A. § 69-3-108 of the ~~Tennessee Water Quality Control Act of 1977,~~ which authorizes the alteration of properties of waters of the ~~State which state that~~ result from activities other than discharges of wastewater through a pipe, ditch or other conveyance. ~~Such a permit shall impose conditions, including standards and terms of periodic review, as are necessary to accomplish the purposes of the Act.~~
- ~~(5) "Background Conditions" means the biological (plant and animal species), chemical and physical conditions of the wetland or water body prior to the proposed activity. If the water body is disturbed, it may be necessary to use the biological, chemical and physical conditions of a similar water body as a reference condition.~~
- ~~(4)~~ "Baseline Conditions" means the biological, chemical, bacteriological, radiological, and physical conditions of a stream or wetland at the time the project is proposed as measured by a quantitative assessment tool or other defensible scientific method as approved or determined by the Division.
- ~~(6)(5)~~ "Best Management Practices" or "BMPs" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of waters of the State. BMP's include methods, measures, practices, and design and performance standards.
- ~~(7)(6)~~ "Certification" means an Aquatic Resource Alteration Permit under the ~~Tennessee Water Quality Control Act of 1977,~~ as when required by § 401 of the Federal Water Pollution Control Act, which certifies, either unconditionally or through imposition of terms under which the activity must be carried out, that the activity will comply with applicable provisions of §§ 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act and Chapter 0400-40-01 of the rules of the Board of Water Quality, Oil and Gas and the Department of Environment and Conservation and the Act.
- ~~(8)(7)~~ "Channelization" means the alteration of stream channels including but not limited to straightening, widening, or enlarging.
- ~~(9) "Cofferdam" means an enclosure from which water can be pumped to expose the bottom of a body of water or a barrier constructed to divert the flow of water to allow construction work.~~
- ~~(10) "Commence Construction" means the physical initiation of on-site structural or earthmoving work.~~
- ~~(11)(8)~~ "Constructed Wetland" means intentionally designed, built and operated on previously nonwetland sites for the primary purpose of wastewater treatment or stormwater retention; such wetlands are not created to provide mitigation for adverse impacts or other wetlands.
- ~~(12) "Clearing and Grubbing" means the removal of vegetation by cutting and digging up roots and stumps.~~
- ~~(13)(9)~~ "Cumulative Impacts" means the impact on ~~the environment~~ resource values which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. ~~A cumulative impact to a wetland can be the loss of the variety of the natural wetland types,~~

~~wetland acreage, functions and classified uses.~~

- ~~(14)(10)~~ "Debris" means woody materials, trash, flotsam, dislodged vegetation, and other potentially mobile materials which may, when located within a stream channel, contribute to flow blockage. This does not include gravel, sand, soil or its constituents such as silt, clay or other sediments.
- ~~(15)(11)~~ "Ditch" means a man-made excavation for the purpose of conveying water. Ditches do not include streams, modified streams or canals.
- ~~(12)~~ "Division" means the Division of Water Resources within the Tennessee Department of Environment and Conservation.
- ~~(16)(13)~~ "Dredging" (sand and gravel dredging) means the removal of sand, gravel and similar sediments or deposits from a stream, river, or lake bed or wetland by any method.
- ~~(17)~~ "Earthmoving" means any construction or other activity, which disturbs the surface of the land including, but not limited to, excavation, embankment, fill, and cut of soil, rock, or earth.
- ~~(18)(14)~~ "Emergency" means a situation where life, public health, the environment, or substantive improvements to real property is in immediate danger.
- ~~(19)(15)~~ "Erosion" means the process by which the land surface is worn away by the action of water, wind, gravity, chemicals, or a combination thereof.
- ~~(20)~~ "Excavation" (a) means a cavity formed by digging, quarrying, uncovering, displacing, or relocating soil or rock; or, (b) means to dig or remove soil, rocks, or other materials resulting in a change in all or part of the elevation of a site.
- ~~(24)(16)~~ "General Permit" means a permit issued under the Act and this rule authorizing an alteration to state waters within the state for a specified category of activities that are substantially similar in nature.
- ~~(22)~~ "Ground water" means water beneath the surface of the ground within the zone of saturation, whether or not flowing through known and definite channels.
- ~~(23)~~ "Ground water table" means the upper surface of the zone of saturation by ground water.
- ~~(24)~~ "Hydrogeomorphic System" means a classification system for wetlands based on geomorphic setting, water source, and hydrodynamics; used to identify and group functionally similar wetlands.
- ~~(17)~~ "HUC" means the hydrologic unit code assigned by the United States Geological Survey.
- ~~(25)(18)~~ "Individual Permit" means a permit issued by the Division ~~of Water Resources~~ to a specified person to conduct specified activities at a specified location. This type of permit does not authorize an activity by a class of persons or the public in general.
- ~~(26)(19)~~ "Interflow" means the runoff infiltrating into the surface soil and moving toward streams as shallow, perched water above the main ground water level.
- ~~(27)(20)~~ "In the Dry" means in such a manner that no equipment or dredged material is in contact with the stream or wetland and that the soil water boundary is not disturbed by equipment or that no infiltration is pumped to the stream from the dredge site.
- ~~(28)(21)~~ "Minimal Impacts" means an activity for which the scope is very limited in area, the impact is very short in duration, and has no appreciable impact to waters just downstream of the location of the activity. Examples of activities with 'minimal impacts' include, but are not limited to, (1) minor channel changes associated with bank stabilization; and (2) an activity typically authorized by General Permit, but which requires an Individual Permit because the project falls under one of the listed exclusions.
- ~~(29)~~ "Minor Road Crossing" is a bridged or culverted roadway fill across a stream or river which results in the alteration of 200 linear feet or less of stream bed or shoreline.



- ~~(30)~~(22) "Mitigation" means ~~compensating for impacts in regulated areas~~ the restoration, creation, enhancement, and/or preservation of aquatic resources to compensate for unavoidable impacts as provided by paragraph (7) of Rule 0400-40-07-.04.
- ~~(31)~~ "Multiple populations" means ~~two or more individuals from each of two or more distinct taxa, in the context of obligate lotic aquatic organisms.~~
- ~~(32)~~ "Normal weather conditions" are ~~those within one standard deviation of the cumulative monthly precipitation means for at least the three months prior to the hydrologic determination investigation, based on a 30-year average computed at the end of each decade. Precipitation data shall come from National Oceanographic and Atmospheric Agency's National Climatic Data Center, National Resources Conservation Service's National Climatic Data Center, Natural Resources Conservation Service's National Water and Climate Center, or other well-established weather station.~~
- ~~(33)~~ "Obligate lotic aquatic organisms" means ~~organisms that require flowing water for all or almost all of the aquatic phase of their life cycles.~~
- ~~(34)~~ "Perched water" means ~~water that accumulates above an aquitard that limits downward migration where there is an unsaturated interval below it, between the aquitard and the zone of saturation.~~
- ~~(35)~~(23) "Practicable alternative" is an alternative that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.
- ~~(36)~~(24) "Resource Values" are the benefits provided by the water resource that help maintain classified uses. These benefits may include, but are not limited to, the ability of the water resource to:
- (a) filter, settle and/or eliminate pollutants;
  - (b) prevent the entry of pollutants into downstream waters;
  - (c) assist in flood prevention;
  - (d) provide habitat for fish, aquatic life, and wildlife~~livestock and water fowl~~;
  - (e) provide drinking water for wildlife and livestock~~water fowl~~;
  - (f) provide and support recreational and navigational uses; and
  - (g) provide both safe quality and adequate ~~quality and~~ quantity of drinking water.
- ~~(37)~~(25) "Sediment" means soil or its constituents that has been deposited in water, is in suspension in water, is being transported, or has otherwise been removed or disturbed from its site of origin.
- ~~(38)~~(26) "Sedimentation or Siltation" means the process by which sediment is deposited in or by the waters of the State.
- ~~(39)~~ "Settling Basin" means ~~a prepared storage area constructed to trap and store sediment from erodible areas in order to protect any streams below the construction areas from excessive siltation; an impoundment that accumulates transported sediment and has provisions for a principal spillway; a reservoir which retains high flows sufficiently to cause deposition of transported sediment.~~
- ~~(40)~~(27) "Stabilize" means the proper placing, grading, and/or covering of soil, rock, or earth to insure their resistance to erosion, sliding or other movement.
- ~~(44)~~(28) "Stream" means a surface water that is not a wet weather conveyance. For purposes of this chapter, and permits issued pursuant to this chapter, a wetland is not a stream. See definition of wetland.
- ~~(42)~~(29) "Structure" means any building, pier, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, mooring structure, moored floating vessel, piling, aid to navigation, bridge, culvert or any other obstacle or obstruction.



- (43) ~~"Utility Line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication.~~
- (44) ~~"Watercourse" means a manmade or natural hydrologic feature with a defined linear channel which discretely conveys flowing water, as opposed to sheet flow.~~
- (45) ~~"Water Dependent" describes an activity that requires location in or adjacent to surface waters or wetlands in order to fulfill its basic purpose.~~
- (46)(30) ~~"Wetlands"~~ "Wetland" means ~~these areas~~ an area that ~~are~~ is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances ~~do~~ does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
- (47) ~~"Wetland Dependent" means that the location of a project or conducting an activity in a wetland is essential to fulfill the purpose of the project. Examples of such projects are fish and wildlife management, nature trails, wildlife observation points, etc.~~
- (48) ~~"Wet Weather Conveyances" are man-made or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality, whose channels are at all times above the ground water table, that are not suitable for drinking water supplies, and in which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months.~~
- (49) ~~"Wet weather conveyance determination" means the decision based on site specific information of whether a particular conveyance is a stream or a wet weather conveyance. It is synonymous with "stream determination" and "hydrologic determination."~~
- (50) ~~"Zone of saturation" means a subsurface zone below the ground water table in which all of the interconnected voids and pore spaces are filled with water.~~
- (51) ~~Terminology not specifically defined herein shall be defined in accordance with the Tennessee Water Quality Control Act of 1977, T.C.A. § 69-3-101 et seq., and the rules adopted thereunder.~~

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Rule 0400-40-07-.04 Permits is amended by deleting it in its entirety and substituting instead the following:

0400-40-07-.04 Permits

(1) Application for a Permit.

~~(a)~~ Any person who plans to engage in any of the activities outlined in T.C.A. § 69-3-108 must obtain a permit from the Commissioner to lawfully engage in such activity. When a § 401 certification is required, the ARAP also serves as the § 401 certification. There are ~~three (3)~~ two (2) types of ~~permits~~ ARAPs: Individual Permits; ~~§ 401 Water Quality Certifications~~; and General Permits. There are several types of General Permits: (1) a General Permit that authorizes the implementation of the activity in accordance with all the terms and conditions of the General Permit without prior notice and approval from the Commissioner; (2) a General Permit which requires the applicant notify TDEC of the planned activity prior to implementing the activity in accordance with the terms and conditions of the General Permit; and (3) a General Permit ~~which that~~ requires the applicant to notify the Commissioner of the planned activity and receive approval a notice of coverage from the Commissioner prior to implementing the activity in accordance with the terms and conditions of the General Permit. ARAP applications shall be submitted on forms approved by the Commissioner, and include all of the information requested therein. Certain of the General Permits authorize an activity that is authorized by a Nationwide Permit of the U.S. Corps of Engineers and therefore serve as a § 401 Certification. Persons need not file an application with the Commissioner if they are conducting an activity pursuant to a General Permit that does not require ~~Notice~~

notice or approval, but must implement the planned activity in accordance with the terms and conditions of the General Permit. Persons who desire to implement an activity pursuant to a General Permit which requires ~~Notice or Notice~~ notice, or notice and prior approval, must submit the necessary documentation required by the General Permit prior to implementing the planned activity in accordance with the terms and conditions of the General Permit. A person must file an application for an Individual Permit or for a § 401 Water Quality Certification with the Department Division, in accordance with paragraphs (3) and (5) of this rule, to implement any activity requiring an ARAP that is not authorized by a General Permit. ~~All General Permits in effect as of the date of this rule shall continue in effect, and are not revoked by these rules.~~<sup>4</sup>

~~(b) — The application to the Commissioner for certification of activities which require § 404 permits from the United States Army Corps of Engineers (Corps) shall be the application filed with the Army Corps of Engineers. The Joint Public Notice which shall be issued by the Corps, describes the activity and notifies the general public of the application for the § 404 permit and state certification and of the public's right to submit comments and requests for public hearing. If further information is required for project evaluation, the Commissioner may request it from either the applicant or the Corps.~~

(2) General ~~permits~~ Permits.

The Commissioner may ~~use~~ issue General Permits to authorize alterations to state waters for specific categories of activities that are substantially similar in nature within the state or other specified geographical areas. General Permits for habitat alterations may be issued only for activities that do not result in an appreciable permanent loss of resource values. General Permits may be issued for water withdrawals that cause no more than de minimis degradation. When the Commissioner determines that a category or activity is suitable for coverage by a General Permit, or that substantive modification of existing General Permits is consistent with T.C.A. § 69-3-108 ~~of the Tennessee Water Quality Control Act of 1977~~, the Commissioner will provide notice of, and conduct a minimum of, one public hearing. The public notice will contain the relevant information, as set forth in subparagraph (4)(c) of this rule and will be published along with a copy of the draft General Permit and a rationale explaining the basis for the permit. ~~TDEC The Division~~ will distribute the public notice to interested persons who have requested ~~TDEC the Division~~ notify them of ARAP applications and by posting on the ~~TDEC Tennessee Department of Environment and Conservation's (TDEC)~~ website. Interested persons may submit written comments on the draft General Permit within thirty (30) days of the public notice or such greater period as the Commissioner allows. All written comments submitted shall be retained and considered in the final determination to issue a General Permit. The procedures for obtaining coverage under a General Permit shall be specified in the General Permit.

(3) § Section 401 Water Quality Certification.

~~(a) — General.~~

~~Any person who plans to engage in any of the activities outlined in § 404 of the Federal Clean Water Act must obtain a federal permit as well as either a state permit or a state water quality certification under § 401 of the Clean Water Act to lawfully engage in such activity in the State of Tennessee. Section 401 of the Federal Clean Water Act requires the Commissioner to certify that the issuance of the federal § 404 permit meets the requirements of sections of the Federal Clean Water Act and the Water Quality Control Act. Persons must make application for the planned activity with the Army Corps of Engineers for an individual § 404 permit or make use of a Corps of Engineers' nationwide permit.~~

~~(b) — An individual § 404 permit.~~

~~Where the activity requires an individual § 404 permit, the application filed with the Army Corps of~~

<sup>4</sup> ~~The following activities were authorized by a General Permit on the date these rules were promulgated: Bank Stabilization, Gravel Dredging, Launching Ramps, Road Crossings, Alteration of Wet Weather Conveyance, Stream Restoration and Habitat Enhancement, Minor Wetlands, Bridge Scour Repair, Emergency Road Repair, Utility Line Crossings, Surveying and Geotechnical Exploration, Minor Dredging, Alteration and Restoration of Intermittent Streams for Mining, Maintenance Activities, Relocation of Intermittent Streams, Wetlands Restoration and Enhancement, and Impoundment of Intermittent Streams.~~

~~Engineers will serve as the application for either the state permit or the state § 401 certification. The applicant must file the completed federal application with TDEC for the Commissioner to process and evaluate. The Commissioner will review a completed application and make a determination whether to issue a § 401 Water Quality Certification. The application must describe the proposed activity and include all the necessary technical information for the Commissioner to make a determination, including an evaluation of practicable alternatives. The practicable alternatives analysis required by this subparagraph shall be satisfied by the applicants' submittal to the Division of a practicable alternatives evaluation for the proposed activity which has been submitted to the Army Corps of Engineers.~~

~~(c) A nationwide permit.~~

~~Where the activity can be authorized by a Corps of Engineers nationwide permit, the § 401 certification can be obtained through the use of a state general permit, if applicable, or an individual permit pursuant to paragraph (5) of this rule. If the Commissioner issues a § 401 Certification, the § 401 Certification is the state permit.~~

An applicant for a federal license or permit to conduct an activity which may result in a discharge to the navigable waters must first obtain a § 401 certification from the Division. If the proposed activity requires an ARAP, that permit serves as the § 401 certification and is subject to the application and public notice procedures for obtaining ARAP coverage established by this chapter. Coverage under a General Permit, obtained either through a notice of coverage or automatic coverage under a General Permit for which no prior notice to the Division is required, constitutes a § 401 certification. If the proposed activity does not require an ARAP, the applicant for a federal license or permit may obtain a § 401 certification by submitting a copy of the federal application to the Division and a request for a § 401 certification.

(4) Public Notice and Participation.

(a) An ARAP Individual Permit or a § 401 Certification requires the issuance of ~~Public Notice~~ public notice seeking public participation and comment on the planned activity. However, ~~Public Notice~~ public notice is not required for an activity authorized by General Permit ~~since Public Notice~~ because public notice is provided pursuant to paragraph (2) of this rule. Each completed application shall be subject to the public notice and participation requirements of subparagraph (b) of this paragraph with the following exceptions:

1. § 401 Certification.

The ~~Department's~~ Division's procedure for issuing public notice for certification of an application for a federal license or permit pursuant to § 401 of the Clean Water Act ~~may be either a public notice issued jointly with the Corps, or for an activity that does not require an ARAP shall be~~ a public notice issued by the ~~Department~~ Division. Such notice will describe the ~~activity,~~ activity and advise the public of the scope of certification, their rights to comment on the proposed activity, and to request a public hearing. The notice will also inform the public to whom they should send their requests and comments.

2. Minimal impact activities.

For activities that are projected to have only minimal impacts to ~~state waters streams or wetlands~~, which can be readily addressed, the Commissioner may utilize a twenty (20) day public notice period.

3. When the Commissioner determines that a proposed permit modification or renewal will not materially change water quality aspects of the project, or will result in an improvement of water quality, as compared to the originally permitted activity, a permit may be modified or renewed without public notice.

4. Where the Commissioner determines an emergency situation exists, a permit for remedial action may be issued without prior public notice and participation. The emergency permit shall be advertised by public notice, however, no later than twenty (20) days after issuance. This permit shall be subject to all other provisions of subparagraph (b) of this paragraph. The remedial actions allowed shall be limited to those necessary to

remedy the emergency.

- (b) Upon receipt of a completed ARAP application, the Commissioner will review and evaluate the proposed activity or project to make a determination whether to issue an Individual Permit, as described in paragraph (5) of this rule. In order to inform interested and potentially interested persons of the proposed activity, a ~~Public Notice~~ public notice seeking public participation and comment on the activity will be given, along with a draft permit and a rationale explaining the basis for the draft permit, including the basis for determining whether a proposed activity will result in an appreciable permanent loss of resource values. Except as provided in subparagraph (5)(c) of this rule, if an activity will result in an appreciable permanent loss of resource values, the draft permit shall include requirements for mitigation and the rationale shall explain the basis for determining that the mitigation is sufficient to result in no overall net loss of resource values from baseline conditions.
- (c) The ~~Public Notice~~ public notice will include the following information:
1. Name, address, and telephone number of the applicant;
  2. Name, ~~and~~ address, telephone number, and electronic mail address of ~~TDEC the~~ Division contact person;
  3. A brief description of the proposed activity;
  - ~~4. A brief description of the scope of the proposed activity;~~
  - ~~5.4.~~ 5. The location of the state waters impacted by the proposed activity;
  - ~~6. A sketch or detailed description of the location of the proposed activity and the subject waters of the state;~~
  - ~~7. The purpose of the proposed activity;~~
  - ~~8. The watershed of the subject waters;~~
  - ~~9. A description of the conditions of the subject waters and the watershed, (e.g., physical conditions of the waters, quality of the waters such as size, flow, substrate, channel, etc.);~~
  - ~~5.~~ 5. The Division website at which additional information about the permit application can be found;
  - ~~10.6.~~ 6. The procedure to submit comments on the proposed activity;
  - ~~11.7.~~ 7. The procedure for requesting a public hearing; and
  - ~~12.8.~~ 8. A brief description of the procedure for the Commissioner to make a final determination to issue a permit.
- (d) The approved ~~Public Notice~~ public notice shall be distributed to interested persons and shall be circulated within the geographical area of the proposed activity as follows:
1. ~~TDEC The Division~~ TDEC The Division will distribute the approved ~~Public Notice~~ public notice to interested persons who have requested ~~TDEC the Division~~ TDEC the Division notify them of ARAP applications and by posting on the TDEC website.
  2. The Applicant shall ~~distribute the approved Public Notice to the neighboring landowners by publishing in a local newspaper of general circulation and by posting~~ post a sign within view of a public road in the vicinity of the proposed project site as specified by the Division. The sign shall contain those provisions as specified by the Division. The sign shall be of such size that is legible readily visible from the public road. Also, the sign shall be maintained for at least thirty (30) days following distribution of the approved ~~Public Notice~~ public notice.

3. The applicant shall provide certification to the Division of compliance with part 2 of this subparagraph.
- (e) A copy of the public notice shall be sent to any person who specifically requests one. Interested persons may submit written comments on the proposed activity within thirty (30) days of public notice or such greater period as the Commissioner allows. All written comments submitted shall be retained and considered in the final determination to issue a permit.
  - (f) Interested persons, including the applicant, may request, in writing, that the Commissioner hold a public hearing on any application. Said request from interested persons must be filed as soon as possible, but no later than the end of the period allowed for public comment, and must indicate the interest of the party filing it, must concisely state the water quality issues being raised, and the reasons why a hearing is warranted. If there are water quality issues and significant public interest in having a hearing, the Commissioner shall hold one in the geographical area of the proposed activity. No less than thirty (30) days in advance of the hearing, public notice of it shall be circulated at least as widely as was notice of the application. The Commissioner will distribute notice of the public hearing as set forth in part (d)1 of this paragraph, and by publishing in a local newspaper. The notice shall cite the date, time and place of the public hearing, a statement of the issues raised by the person requesting the hearing, and the purpose of the public hearing.
- (5) Individual Permits.
- (a) Persons who plan to engage in any activity that requires an Aquatic Resource Alteration Permit which is not governed by a General Permit or a § 401 Water Quality Certification, must submit an application to the Commissioner for review and approval prior to implementing the planned activity. The Commissioner will review a completed application and make a determination whether to issue an Individual Permit. The application must describe the proposed activity and include all the necessary technical information for the Commissioner to make a determination. ~~The applicant shall assess the practicable alternatives for a planned activity. If the activity does not avoid impacts to state waters, the individual must comply with paragraph (7) of this rule. However, if the nature of the affected waters is such that mitigation is not reasonably likely to result in no net loss of water resource values, and if there is a practicable alternative to the activity which through avoidance or minimization of impacts would result in no net loss, then such alternative shall be selected.~~
  - ~~(b)~~ The applicant shall submit an alternatives analysis evaluating a range of potentially practicable alternatives to minimize the loss of resource values consistent with the overall purpose of the proposed activity. For public road projects commissioned by a state, county, or local government, this alternatives analysis does not need to include alternative locations. No Individual Permit shall be granted if there is a practicable alternative to the proposed activity that would have less adverse impact on resource values, so long as the alternative does not have other significant adverse environmental consequences.
  - ~~(b)(c)~~ An ~~The~~ applicant shall describe the proposed project including the use of technical terms defined in Rule 0400-40-07-.03 where relevant. The sketch or plans and specifications submitted with the application shall describe the method for implementation of the planned activity. Where the proposed activity would result in an appreciable permanent loss of resource value, the applicant must propose ~~adequate~~ mitigation ~~actions so that there is~~ sufficient to result in no overall net loss of state water resource values. ~~The applicant shall set forth in the application a brief summary of the practicable alternatives considered to implement the proposed activity. In unusual circumstances, including but not limited to emergency permits, a state, county, or local government applicant may propose a specific mitigation plan after an Individual Permit has been issued, provided that the permit shall specify the amount of mitigation required and an implementation timeline.~~
  - ~~(c)(d)~~ An Individual Permit is required for water withdrawals which will or will likely result in alteration of the properties of the source stream and will result in more than de minimis degradation.
1. Persons proposing to withdraw water from waters of the state in a manner which will or will likely result in an alteration of the properties of the source stream, shall file an

application with the ~~Department~~ Division which includes the following minimum information:

- (i) proposed withdrawal rates and volumes;
- (ii) proposed withdrawal schedule; and
- (iii) flow data of the source stream (if free flowing).

- 2. Where a permit for water withdrawal is required, the Commissioner shall establish permit conditions which are protective of the source stream's resource value. These conditions may include flow levels below which no withdrawal may occur. The Commissioner may also establish a maximum withdrawal rate in order to maintain the natural flow fluctuation characteristics of the source stream. Monitoring and reporting requirements may be established to ensure and document compliance with permit conditions.

(6) Permit Evaluation Criteria.

- (a) Some activities may not be entitled to a permit. When a permit is granted, it shall require compliance with all provisions of the Act, the regulations adopted pursuant to the Act, and any special terms or conditions the Commissioner determines are necessary to fulfill the purposes or enforce the provisions of the Act.
- (b) A permit may be modified, suspended, or revoked for cause by the Commissioner upon such notice to the permittee as required by law. ~~Permits for activities that have been completed are not subject to modification. If a modification results in a less restrictive permit, then public notice and opportunity for hearing must be given prior to modification.~~ Cause shall include, but not be limited to the following:
  - 1. violation of any terms or conditions of the permit;
  - 2. obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
  - 3. causing a condition of pollution;
  - 4. violation(s) of the Act or other environmental statutes;
  - 5. a change in the Act or regulations that substantively impacts the content of the permit;
  - 6. a change in the Federal Clean Water Act that substantively impacts the content of the permit; and
  - 7. a significant change of the physical condition(s) of the site or the waters.
- (c) ~~The Act requires that no~~ No activity may be authorized by the Commissioner unless any ~~lost appreciable permanent loss of~~ resource ~~value values~~ associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource ~~value values from baseline conditions~~. In a situation in which an applicant proposes mitigation that would not result in no overall net loss, the Commissioner shall not issue the permit unless the applicant redesigns the project to avoid impacts, minimize them, or provide mitigation as provided in paragraph (7) of this rule so that the redesigned project would result in no net loss of resource value. In making a decision on a permit application, the Commissioner shall determine the ~~lost loss of~~ resource ~~value values from baseline conditions~~ associated with a proposed impact and the increase in resource ~~value values~~ of any proposed mitigation and shall consider the following factors:
  - 1. direct loss of stream length, waters, or wetland area due to the proposed activity;
  - 2. direct loss of in-stream, ~~waters,~~ or ~~wetlands~~ wetland habitat due to the proposed activity;
  - 3. impairment of stream channel stability due to the proposed activity;



4. diminishment in species composition in any ~~stream, stream or~~ wetland, ~~or state waters~~ due to the proposed activity;
  5. direct loss of stream canopy due to the proposed activity;
  6. whether the proposed activity is reasonably likely to have cumulative or secondary impacts to the water resource;
  7. conversion of unique or high quality waters as established in Rule 0400-40-03-.06 to more common systems;
  8. hydrologic modifications resulting from the proposed activity;
  9. the adequacy and viability of any proposed mitigation including, but not limited to, quantity, quality, likelihood of long term protection, and the inclusion of ~~upland~~ riparian buffers;
  10. quality of stream or wetland proposed to be impacted;
  11. whether the ~~state waters~~ stream or wetland is listed on the § 303(d) list; whether the proposed activity is located in a component of the National Wild and Scenic River System, a State Scenic River, waters designated as Outstanding National Resource Waters, or waters identified as high quality waters as defined in Rule 0400-40-03-.06, known as Tier II waters; whether the activity is located in a waterway which has been identified by the ~~Department~~ Division as having contaminated sediments; and whether the activity will adversely affect species formally listed in State and Federal lists of threatened or endangered species; and
  12. any other factors relevant under the Act.
- (d) All permits which require mitigation of impacts shall contain conditions requiring that the mitigation is performed properly, performed in a timely manner and is adequately maintained.
- (7) Mitigation.

~~(a) Mitigation of state waters other than wetlands.~~

~~If an applicant proposes an activity that would result in an appreciable permanent loss of resource value of a state water, the applicant must provide mitigation which results in no overall net loss of resource values. The applicant shall provide the Commissioner with a time schedule for completion of all mitigation measures for approval. Further, for any mitigation involving the relocation or re-creation of a stream segment, to the extent practicable, the applicant shall complete the mitigation before any impact occurs to the existing state waters. Mitigation measures include, but are not limited to:~~

- ~~1. Restoration of degraded stream reaches and/or riparian zones;~~
- ~~2. New (relocated) stream channels;~~
- ~~3. Removal of pollutants from and hydrologic buffering of stormwater runoff; and~~
- ~~4. Any other measures which have a reasonable likelihood of increasing the resource value of a state water.~~

~~The Commissioner will assess the proposed mitigation to assure there is no overall net loss of resource value. The mitigation measures or actions should be prioritized in the following order: restoration, enhancement, re-creation, and protection.~~

~~(b) Mitigation of Wetlands.~~

- ~~1. If an applicant proposes an activity that would result in an appreciable permanent loss of~~



~~resource value of wetlands, the applicant must provide mitigation, which results in no overall net loss of resource value. The applicant shall provide the Commissioner with a time schedule for completion of all mitigation measures for approval. Further, for any mitigation involving the enhancement or preservation of existing wetlands, to the extent practicable, the applicant shall complete the mitigation before any impact occurs to the existing state waters. For any mitigation involving restoration or creation of a wetland, to the extent practicable, the mitigation shall occur either before or simultaneously with impacts to the existing state waters. Mitigation for impacts to wetlands are prioritized as follows:~~

- ~~(i) Restoration of a previously degraded or impacted wetland (with emphasis on prior converted areas) on-site or in the immediate project area;~~
- ~~(ii) Restoration, including mitigation banking, off-site but within the eight digit United States Geological Survey hydrological unit in which the project is located;~~
- ~~(iii) Restoration, including mitigation banking, outside of the eight digit United States Geological Survey hydrological unit in which the project is located;~~
- ~~(iv) Creation of wetlands on-site or in the immediate project area;~~
- ~~(v) Creation of wetlands off-site;~~
- ~~(vi) Enhancement of existing wetlands;~~
- ~~(vii) Preservation of existing wetlands; or~~
- ~~(viii) A combination of any of the above activities.~~

~~2. The ratio of acres required for wetland mitigation should not be less than 2:1 for restoration activities; 4:1 for creation and enhancement; and 10:1 for preservation. Alternatively, the applicant may propose and utilize, subject to the Division's approval, best professional judgment ratios. The best professional judgment ratios shall be based on the resource value and functions of the affected wetland, resource value of the mitigation, and the likelihood of success of the mitigation.~~

~~3. All wetland mitigation projects shall include a monitoring and reporting program to document timely achievement of a successful mitigation wetland and remedial actions to correct any deficiency.~~

(a) If an applicant proposes an activity in stream or wetland that would result in an appreciable permanent loss of resource values, the applicant must provide mitigation which results in no overall net loss of resource values from baseline conditions.

1. The applicant shall provide the Division with a mitigation plan, including a time schedule for completion of all mitigation measures, for approval. To the extent practicable, the applicant shall complete any required mitigation, excluding monitoring, prior to, or simultaneous with, any authorized impacts.

2. Acceptable mitigation mechanisms include any combination of permittee-responsible mitigation, in-lieu fee programs, mitigation banks, or other mechanisms that are reasonably assured to result in no overall net loss of resource values from baseline conditions.

3. Acceptable mitigation methods are prioritized in the following order: restoration, enhancement, preservation, creation, or any other measures that are reasonably assured to result in no net loss of resource values from baseline conditions.

4. The Division will evaluate resource value compensation through the use of an appropriate quantitative assessment or other defensible scientific method, and where applicable will account for temporal loss of resource values. The Division will use a

watershed prioritization approach to evaluate proposed mitigation sites. Mitigation should occur as close to the impact location as practicable, prioritized as follows:

- (i) projects providing an increase in resource values to degraded streams or wetlands on site or within the immediate impact area;
- (ii) projects providing an increase in resource values to degraded streams or wetlands within the HUC-12 in which the impact is located;
- (iii) projects providing an increase in resource values to degraded streams or wetlands within the HUC-8 in which the impact is located;
- (iv) projects providing an increase in resource values to degraded streams or wetlands outside the HUC-8 in which the impact is located; or
- (v) A combination of any of the above activities.

Where appropriate, the Division may apply a multiplier based on items (i) through (v) of this part.

5. All mitigation plans shall include a monitoring and reporting program to document timely achievement of successful mitigation and remedial actions to correct any deficiency.

6. Mitigation for impacts to Tennessee streams and wetlands shall occur in Tennessee.

(b) Mitigation of streams

Mitigation for impacts to streams shall be developed in accordance with the most recent Stream Mitigation Guidelines developed by the Division or other defensible scientific methodology.

(c) Mitigation of Wetlands.

1. Prioritization of mitigation site selection for wetland impacts may also be based on U.S. EPA Level III ecoregions.

2. The ratio of acres required for wetland mitigation should not be less than 2:1 for wetland restoration; 4:1 for wetland creation and enhancement; and 10:1 for wetland preservation. Applicants may propose and utilize, subject to the Division's approval, best professional judgment ratios. The best professional judgment ratios shall be based on the resource values and functions of the affected wetland, anticipated resource value of the proposed mitigation, temporal loss, and the likelihood of success of the proposed mitigation.

(8) Duration and ~~Re-issuance~~ Renewal of Permits.

(a) Each permit issued shall have a fixed term not to exceed five (5) years.

(b) ~~Re-issuance~~ Renewal of permits is not required for one-time alterations such as construction, as long as the alterations, mitigation, and monitoring are completed within the time limit established by permit. Any permittee that has not completed the alteration authorized by the permit, or the mitigation and monitoring required by the permit, must apply for renewal at least ninety (90) days prior to the expiration date.

(c) For on-going alterations, such as water withdrawals, any permittee who wishes to continue the permitted activity after the expiration date of the permit must make application for renewal at least ninety (90) days prior to its expiration date. If an application for permit renewal does not fall within subparagraph (4)(a)3 of this rule, (d) The the Commissioner shall follow the procedures for public notice and participation detailed in paragraph (4) of this rule, regarding each application for ~~re-issuance~~ renewal of ~~a~~ the permit.

(9) ~~Review of Permit Denials, Suspensions, Revocations, Terms and Conditions~~ Appeals.

~~Permittees and applicants for permits who disagree with the denial, suspension or revocation of a permit or the terms and conditions of a permit are entitled to review of the Commissioner's decision by the Board of Water Quality, Oil and Gas pursuant to T.C.A. § 69-3-105.~~

- ~~(a) Permittees, applicants for permits, and aggrieved persons meeting the criteria of subparagraph (c) of this rule who disagree with the denial, issuance, terms, or conditions of a permit are entitled to review of the Commissioner's decision by the Board of Water Quality, Oil and Gas pursuant to T.C.A. § 69-3-105(i) and § 69-3-110.~~
- ~~(b) For permit modifications only those terms that were the subject of the modification may be appealed.~~
- ~~(c) To be entitled to a review of the Commissioner's permit decision, aggrieved persons shall:~~
  - ~~1. have submitted a written comment during the public comment period on the permit;~~
  - ~~2. have engaged in other direct communication with the Division regarding the proposed permit action during the public comment period;~~
  - ~~3. given testimony at a formal public hearing on the permit; or~~
  - ~~4. attended a public hearing as evidenced by completion of a Department of Environment and Conservation Record of Attendance Card or other method as determined by the Division.~~
- ~~(d) The basis for the appeal for aggrieved persons may only include issues which:~~
  - ~~1. were provided to the Commissioner in writing during the public comment period;~~
  - ~~2. were provided in testimony at a formal public hearing on the permit; or~~
  - ~~3. arise from any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment.~~
- ~~(e) All petitions for permit appeals shall be filed with the Board of Water Quality, Oil, and Gas within 30 days after the date that public notice of the permit issuance, denial, or modification is given by way of distribution of the notice to persons who meet the criteria of paragraph (3) of this rule.~~
- ~~(f) Any action taken by the Commissioner regarding a permit remains in effect unless and until an order of the Board of Water Quality, Oil and Gas or a reviewing court becomes final.~~

~~(10) Alteration of wet weather conveyances~~

- ~~(a) The alteration of wet weather conveyances, as defined in T.C.A. § 69-3-103, by any activity is permitted by this paragraph and shall require no notice to or approval by the department, provided it is done in accordance with the following conditions:~~
  - ~~1. The activity may not result in the discharge of waste or other substances that may be harmful to humans or wildlife;~~
  - ~~2. Material may not be placed in a location or manner so as to impair surface water flow into or out of any wetland area; and~~
  - ~~3. Sediment shall be prevented from entering other waters of the state.~~
    - ~~(i) Erosion and sediment controls shall be designed according to the size and slope of disturbed or drainage areas to detain runoff and trap sediment and shall be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices.~~

- ~~(ii) Erosion and sediment control measures shall be in place and functional before earthmoving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the work day, but shall be replaced at the end of the work day.~~
  - ~~(iii) Checkdams shall be utilized where runoff is concentrated. Clean rock, log, sandbag or straw bale checkdams shall be properly constructed to detain runoff and trap sediment. Checkdams or other erosion control devices are not to be constructed in stream. Clean rock can be of various type and size depending on the application. Clean rock shall not contain fines or other wastes or contaminants.~~
- ~~4. Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills shall be reported to the appropriate emergency management agency and to the department. In the event of a spill, measures shall be taken immediately to prevent pollution of waters of the state, including ground water.~~
- ~~5. There shall be no additional conditions upon a person's activity within a wet weather conveyance. This provision does not apply to National Pollutant Discharge Elimination System Permits.~~

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: May 2, 2018

Signature: \_\_\_\_\_

Name of Officer: Jennifer Dodd

Title of Officer: Director of the Division of Water Resources

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State